

REMARKS

Claims 1-65 are pending in the subsection application. Applicant traverses the rejections in the Office Action dated February 12, 2008, for the reasons that follow.¹

Finality of Office Action

It is unclear whether the Office Action is final. Both the Office Action Summary and the online Patent Application Information Retrieval (PAIR) web site indicate the Office Action is non-final. In addition, the Office Action includes a new grounds of rejection, which is noted by the Examiner at page 7, paragraph 17 of the Office Action. As such, contrary to the indication on page 8, paragraph 19, Applicant presumes that the Office Action is non-final.

If the Examiner actually intended the Office Action to be final, Applicant respectfully submits that the finality would be premature. M.P.E.P. § 706.07(a) states, "second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is [not] necessitated by applicant's amendment of the claims" (emphasis added). Pursuant to M.P.E.P. §§ 706.07(h) and 1207.03(III), a new ground of rejection may occur when the basic thrust of the rejection has changed such that an appellant is not given a fair opportunity to react to the rejection; where the statutory basis for the rejection is changed; or where evidence relied upon in support of the rejection is changed.

As noted above, the Office Action includes a new ground for rejecting claims 2, 4 and 5. (Office Action, p. 7, ¶ 17, "note that arguments related to claims 2 and 4-5 are moot because of the new reasoning used in the rejection".) This change was not necessitated by Applicant's reply to the last Office Action. Accordingly, it would be improper for the Examiner to make the Office Action final because doing so would deny Applicant a fair

¹ The Office Action contains statements characterizing the claims and related art. Regardless of whether any such statements are specifically addressed herein, Applicant's silence as to these characterizations should not be construed as acceptance of them.

opportunity to respond to the Examiner's new arguments in reply to the Examiner's new ground of rejection.

Rejection Under 35 U.S.C. § 102(e)

Applicant traverses the rejection of claim 1 under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 5,774,729 to *Carney et al.* ("*Carney*"). *Carney* cannot support a rejection of claim 1 because it fails to disclose, at least, "routing the event to a human interface object based on the determined routing type for the event," as recited in claim 1. The Examiner apparently asserts that *Carney's* disclosure of an interactive debugger and a mouse/keyboard event handler correspond to Applicant's claimed "human interface object." Applicant respectfully disagrees.

First, a debugger cannot be considered to correspond to the claimed "human interface object." In *Carney*, events are routed to the event handlers based on whether an event is identified as "targeted" or "broadcast." (*Carney*, col. 4:41-60, Fig. 3.) The debugger, however, is distinct from the event handlers. (*See, e.g.*, col. 5:58-59.) After receiving an event, a handler may forward the event on to the debugger. *Carney*, however, does not disclose that events are routed to the debugger based on the events' designation. Accordingly, *Carney* events are not routed to the debugger "based on the determined routing type for the event" (emphasis added), as recited in claim 1. *Carney's* debugger does not, therefore, anticipate the claimed "human interface object."

Carney's event handlers also cannot be properly interpreted to anticipate the claimed "human interface object." "The Patent and Trademark Office ("PTO") determines the scope of claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction 'in light of the specification as it would be interpreted by one of ordinary skill in the art.'" (*Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005), *quoting In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359,

1364, 70 USPQ2d 1827 (Fed. Cir. 2004), emphasis added.) "In the absence of an express intent to impart a novel meaning to the claim terms, the words are presumed to take on the ordinary and customary meanings attributed to them by those of ordinary skill in the art." (*LLC v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1298 67 USPQ2d 1132, 1136 (Fed. Cir. 2003.)

The Examiner alleges that Applicant's specification does not assign any meaning to the term "human interface object" and, thus, considers the recited feature to mean "as a piece of program code (i.e., an object) for handling events related to human interface[s]." (Office Action, p. 7, ¶ 18.) On the contrary, the Examiner's interpretation of the claim features is improper because it fails to interpret the term "in light of the specification."

Applicant's specification states "Events which are directed to human interface elements are typically referred to as human interface events ("HI events"). Examples of human interface elements include, but are not limited to, windows, panels, editable text, push buttons, list boxes, radio buttons, etc." (See Applicant's Specification, p. 2.) Applicant's disclosure cannot be ignored to redefine the claimed "human interface object" to be a piece of program code for handling events related to human interfaces, as the Examiner alleged.

In light of Applicant's specification, one of ordinary skill in the art would not interpret the claimed "human interface objects" to be taught by *Carney's* event handlers. As noted previously, an event handler is a program that is automatically called whenever a particular event occurs. (See, e.g., the Microsoft Computer Dictionary, 5th Edition, 2002.) Based on this and the above-quoted portion of Applicant's specification, the artisan would interpret the claimed "human interface object" to distinguish from an event handler without importing any limitations from the claims, at least because there is no "human interface" with an event handler.

The Examiner argues, "even if one restrict[s] the 'human interface object' to specific objects such as a window ... the various programs handling these objects could still be called event handlers." Applicant respectfully disagrees for the reasons already stated above. Moreover, *Carney's* events are conditions or exceptions such as errors or events which require special attention. (*Carney*, cols. 2:45-50; 4:35-40.) But *Carney* says nothing with regard to windows, or the like. As such, it cannot be considered to disclose or suggest "human interface objects," as recited in claim 1.

For the reasons above, *Carney* does not anticipate the subject matter recited in claim 1. For at least the same reasons, *Carney* does not teach the subject matter recited in independent claims 13, 25, 29, 36, 41, 43, 45 and 50. Accordingly, *Carney* cannot support a rejection of claims 13, 25, 29, 36, 41, 43, 45 and 50 under 35 U.S.C. § 102(e). Applicant, therefore, requests that the rejection of these claims be withdrawn and the claims allowed.

Claims 6-8, 12, 18-20, 24, 28, 32, 39, 42, 44, 49 and 54 depend from claims 1, 13, 25, 29, 36, 41, 43, 45 and 50 and, thus, are allowable at least due to their corresponding dependence from claims 1, 13, 25, 29, 36, 41, 43, 45 and 50.

Rejections Under 35 U.S.C. § 103(a)

Independent claims 33 and 58 recite similar subject matter as recited in claims 1, 13, 25, 29, 36, 41, 43, 45 and 50. Thus, *Carney* cannot support a rejection of these claims under 35 U.S. C. § 103(a) for at least the same reasons as set forth above with regard to claims 1, 13, 25, 29, 33, 36, 41, 43, 45 and 50.

Claims 2-5, 9-11, 14-17, 21-23, 26, 27, 30, 31, 34, 35, 37, 38, 40, 46-48, 51-53, 55-57 and 59-65 depend from independent claims 1, 13, 25, 29, 36, 41, 43, 45, 50 and 58, therefore, include all the limitations of the corresponding independent claim from which they depend. As set forth above, *Carney* fails teach all the elements of claims 2-5, 9-11, 14-17, 21-23, 26, 27, 30, 31, 34, 35, 37, 38, 40, 46-48, 51-53, 55-57 and 59-65. For the same

reasons, *Carney* does not disclose or suggest features of these claims. Accordingly, *Carney* cannot support a *prima facie* case for rejection claims 2-5, 9-11, 14-17, 21-23, 26, 27, 30, 31, 34, 35, 37, 38, 40, 46-48, 51-53, 55-57 and 59-65 under 35 U.S.C. § 103(a).

Furthermore, with regard to claim 2, the Examiner concedes that *Carney* fails to disclose or suggest "routing type is a member of a set including a first routing type that is routed based on geometric coordinates of an event and a second routing type that is routed based on an input focus," as recited in claim 2. However, relying on Official Notice, the Examiner asserts that "events based on geometric coordinates (such as a mouse event) and focus type (such as a keyboard event) are well known in the art.

The Examiner asserts "Carney's event handling unit ... can obviously distinguish the differences ... between these events and route them to different handlers." (Office Action, p. 5, ¶ 12.) But *Carney* discloses or suggests nothing of the kind. Indeed, nothing in the *Carney* or the alleged facts taken by Official Notice would disclose or suggest the above-noted features recited in Applicant's claim 2 or the claimed interrelationship of these features. Applicant, therefore, respectfully submits that the Examiner has improperly repurposed the elements of *Carney* and combined them with allegedly well know facts in the purported manner based on knowledge gleaned from Applicant's own specification and using Applicant's claim as a template. (See, e.g., Applicant's FIG. 11.) Such reliance on Applicant's own disclosure, rather than documentary evidence, constitutes improper hindsight reconstruction and cannot support a *prima facie* case for rejecting claim 1 under 35 U.S.C. § 103(a). (See M.P.E.P. § 2142.)

Moreover, the Office Action does not set forth sufficient findings to support a conclusion of obviousness. The rationale to support a conclusion that the claim would have been obvious is that "a person of ordinary skill in the art would have been motivated to combine the prior art to achieve the claimed invention and that there would have been a

reasonable expectation of success." (*DyStar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co.*, 464 F.3d 1356, 1360, 80 USPQ2d 1641, 1645 (Fed. Cir. 2006), MPEP § 2143(G).) If any of these findings cannot be made, then this rationale cannot be used to support a conclusion that the claim would have been obvious to one of ordinary skill in the art. (MPEP § 2143(G).)

The Examiner has failed to set forth a proper motivation as to why one of ordinary skill in the art would have made the purported changes of *Carney* and why there would be a reasonable expectation of success. It is merely asserted that the modifications would be a matter of "programmer's design choice." (Office Action, p. 5, ¶ 12.) On the contrary, even if design choice was an appropriate rationale, which it is not, there still must be some motivation to make the purported modification. (MPEP § 2144(IV)(C).)

Claim 4 recites "the routing type is one of an extensible plurality of routing types, wherein routing types can be added to said plurality" and claim 5 recites "said routing types can be deleted from said plurality." In the Office Action, the Examiner rejected claims 4 and 5 based on the same reasons given for claim 2. (Office Action, p. 5, ¶ 14.) However, for at least the same reasons set forth above with regard to claim 2, the rejection of claims 4 and 5 under Section 103 is improper. In addition, the Examiner does not assert that the above-identified features of claims 4 and 5 are known. The Examiner has conceded that *Carney* fails to disclose these features. (*Id.*) Accordingly, *Carney* and the facts alleged by Official Notice, when taken individually or in combination, cannot support a rejection of claims 4 and 5 under 35 U.S.C. § 103(a).

Furthermore, there would be no reason to make the purported modification of *Carney*. The patent is only concerned with two types of events - those which are targeted to a specific event handler, and those which are to be sent to multiple event handlers. (*Carney*, col. 4:41-60, Fig. 3.) Since these two designations cover the events disclosed in *Carney*,

there would be no reason to add other types. Accordingly, it is respectfully submitted that the Office Action does not establish that it would be obvious to employ an extensible set of routing types within the context of the Carney patent.

Claims 14-17, 26, 27, 30, 31, 37, 38, 40, 46, 47, 51, 52, 55 and 56 recite subject matter to that cited in claims 2, 4 and 5. Accordingly, 14-17, 26, 27, 30, 31, 37, 38, 40, 46, 47, 51, 52, 55 and 56 are allowable over *Carney* and the facts alleged by Examiner's Official Notice for the same reasons set forth above with regard to claims 2, 4 and 5.

Conclusion

For the reasons set forth above, Applicant respectfully requests allowance of the pending claims.

If additional fees are required for any reason, please charge Deposit Account No. 02-4800 the necessary amount.

Respectfully submitted,

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